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SALES—IMPLIED WARRANTY—FITNESS FOR FOOD.—Defendant was keeper of a market. At about 9:15 on a Saturday evening in July the plaintiff went to defendant's market and purchased a chicken, apparently plucked but not "drawn." The chicken was exhibited for sale upon a "bargain counter" on which goods were sold on Saturday nights at one-half the regular prices. "It is manifest that" the defendant offered this meat for sale to avoid carrying it over Sunday in hot weather, and it is a fair inference that like all articles on a bargain counter the selection was to be made by the buyer." The next morning at 10 o'clock she prepared it for cooking, cooked it, and, with her two children, ate of it at 4 o'clock in the afternoon. All three were made sick, evidently from ptomaine poisoning. Each one brought an action to recover damages, relying upon an alleged implied warranty that the fowl was fit for human food. *Held*, that no one of them can recover: *Farrell v. Manhattan Market Co.* (1908),—Mass.—, 84 N. E. Rep, 481.

It has been often said and not infrequently held in the United States that, upon the sale of articles of food by a dealer directly to the consumer, there is an implied warranty that the article sold is fit for food. See *Wiedeman v. Keller*, 171 Ill. 93, 49 N. E. 210; *Craft v. Parker*, 96 Mich. 245, 55 N. W. 812, 21 L. R. A. 139. A few cases have extended the liability to one not a dealer: *Hooover v. Peters*, 18 Mich. 51; *Van Bracklin v. Fonda*, 12 Johns (N. Y.) 468, 7 Am. Dec. 339. The rule in either form is an exception to the ordinary rule of *caveat emptor*, as applied to the present sale of an existing chattel open for inspection. It doubtless grew up in this country largely as the result of a misconception of the early English rule which was really based upon statute; although a number of reasons of policy have also been assigned for it. The English "Sale of Goods Act" makes no provision for any special warranty upon a sale of food; and the proposed American code follows the English in this respect. Under the English Act a warranty would be implied only where the seller's judgment was relied upon; and this is the rule adopted by the Massachusetts court in the principal case. Under the proposed American code, the same rule seems to be indicated. It is fairly open to question whether the rule of an implied warranty, although it be admitted to be exceptional, is not on the whole a salutary one; and whether the failure to provide for it in the proposed code is not a defect. In the principal case, the fact that the fowl was placed for sale at half price upon a "bargain counter" might be urged as fairly putting the buyer upon his guard.

WILLS—CONSTRUCTIVE TRUSTS—ACTS SUBSEQUENT TO EXECUTION.—Testator had executed a will by which he devised all of his estate to his wife. A few months before his death in 1889 he added a codicil thereto by which he devised other property to his wife. Parol evidence was offered to show that a few weeks afterwards he desired to alter the will, but refrained from so doing upon the promise of the wife that she would devise this property to the person to whom testator wanted it to go. The evidence was excluded under the Statute of 1844 (Revisal 1905, § 3, 118), which